

B. REMARKS

No claims have been canceled or added in this reply. Hence, Claims 1, 3, 5-19, 21-42, 44, 46-60, 62-83 and 85 are pending in this application. The amendments to the claims do not add any new matter to this application. All issues raised in the Office Action mailed September 5, 2006 are addressed hereinafter.

REJECTION OF CLAIMS 1, 3, 5-10, 13, 16, 17, 21, 22, 24-27, 29-42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 AND 70-82 UNDER 35 U.S.C. § 103(a)

Claims 1, 3, 5-10, 13, 16, 17, 21, 22, 24-27, 29-42, 44, 46-51, 54, 57, 58, 62, 63, 65-68, 70-82 and 84 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Elnozahy et al.*, U.S. Patent No. 6,792,459 (hereinafter “*Elnozahy*”) in view of *Mortensen et al.*, U.S. Patent No. 5,481,735 (hereinafter “*Mortensen*”). It is respectfully submitted that Claims 1, 3, 5-10, 13, 16, 17, 21, 22, 24-27, 29-42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 are patentable over *Elnozahy* and *Mortensen*, considered alone or in combination, for at least the reasons provided hereinafter.

CLAIM 1

Claim 1 is directed to a method for measuring client side performance that recites:

“an application program executing on a server device processing a request from a client process executing on a client device and generating an item in response thereto that is to be sent to the client process; intercepting the item generated by the application program prior to arrival of the item at the client process; determining a percentage of total items sent to the client process that are to be modified; determining, based upon the percentage of total items sent to the client process that are to be modified, whether the intercepted item is to be modified; and if, based upon the percentage of total items sent to the client process that are to be modified, the intercepted item is to be modified, then modifying the intercepted item transparently with respect to the application program to produce a modified item that includes code which, when processed by one or more processors at the client device causes: at the client device, measuring performance related to a service associated with the item, and at the client device, performing one or more acts based on a measurement resulting from said step of measuring performance, wherein the one or more acts includes sending data indicating the measurement to an entity over the network; and

sending the modified item over the network to the client process executing on the client device.”

It is respectfully submitted that Claim 1 recites one or more limitations that are not taught or suggested by *Elnozahy* and *Mortensen*, considered alone or in combination. In the approach for measuring client side performance recited in Claim 1, the application program executing on the server device processes a request from a client process executing on a client device. In response to the request, the application program generates an item that is to be sent to the client process. The item is intercepted and modified prior to arrival at the client process. The determination of whether to modify the item is based upon the percentage of total items sent to the client process.

One significant distinction between the approach recited in Claim 1 and the approach in *Elnozahy* is that in *Elnozahy*, the instrumented Web pages are generated and installed on the host server before any requests for the instrumented Web pages are processed. More specifically, in *Elnozahy*, Web pages 31 through 33 are sent from host's server 110 to server 185 to be instrumented by inserting scripts 210, 220 and 230 into Web pages 31-33. Server 185 then sends the pages 131-133, which have the scripts 210-230 attached, back to the host's server 110 for replacing the web pages in storage unit 115. These web pages 131-133 are all part of the same bundle 200 of pages that the verifying agent's server 185 has instrumented. When a user 149 requests one of the instrumented pages 131-133, the scripts associated with the page are also delivered to the user's client 150. Once delivered, the scripts 210-230 are executed by the client 150 responsive to certain events. Thus, the Web pages 31-33 are not intercepted and modified after being requested by a client process in the manner recited in Claim 1. Instead, the Web pages 31-33 are instrumented before being requested by a client process. The approach recited in Claim 1 provides the advantage of intercepting and modifying items after they are requested, so that the modified items have the most recent code 108. Instrumenting Web pages ahead of time as is done in *Elnozahy* allows the Web pages to become stale and not contain the most recent scripts. Intercepting and modifying items in the manner recited in Claim 1 is also not taught or suggested by *Mortensen* and *Mortensen* was not relied upon for this purpose. *Mortensen* was relied upon for teaching the steps in Claim 1 relating to selecting a percentage of items for modification.

In view of the foregoing, it is respectfully submitted that at least the Claim 1 limitations “an application program executing on a server device processing a request from a client process executing on a client device and generating an item in response thereto that is to be sent to the client process” and “intercepting the item generated by the application program prior to arrival of the item at the client process” are not taught or suggested by *Elnozahy* and *Mortensen*, considered alone or in combination, and Claim 1 is therefore patentable over *Elnozahy* and *Mortensen*.

CLAIMS 3, 5-10, 13, 16, 17, 21, 22, 24-27 AND 29-41

Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 all depend from Claim 1 and include all of the limitations of Claim 1. It is therefore respectfully submitted that Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 are patentable over *Elnozahy* and *Mortensen* for at least the reasons set forth herein with respect to Claim 1. Furthermore, it is respectfully submitted that Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 recite additional limitations that independently render them patentable over *Elnozahy* and *Mortensen*.

CLAIMS 42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 AND 70-82

Claim 42 is similar to Claim 1, except in the context of a computer-readable medium. It is therefore respectfully submitted that Claim 42 is patentable over *Elnozahy* and *Mortensen* for at least the reasons set forth herein with respect to Claim 1. Claims 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 all depend from Claim 42 and include all of the limitations of Claim 42. It is therefore respectfully submitted that Claims 42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 are patentable over *Elnozahy* and *Mortensen* for at least the reasons set forth herein with respect to Claim 42.

In view of the foregoing, it is respectfully submitted that Claims 1, 3, 5-10, 13, 16, 17, 21, 22, 24-27, 29-42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 are patentable over *Elnozahy* and *Mortensen*.

REJECTION OF CLAIMS 11, 12, 14, 15, 52, 53, 55, 56, 83 AND 85 UNDER 35 U.S.C. § 103(a)

Claims 11, 12, 14, 15, 52, 53, 55, 56 and 83 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Elnozahy* in view of *Mortensen* and further in view of *Burgess et al.*, U.S. Patent No. 5,696,701 (hereinafter “*Burgess*”). It is respectfully submitted that Claims 11, 12, 14, 15, 52, 53, 55, 56, 83 and 85 are patentable over *Elnozahy*, *Mortensen* and *Burgess*, considered alone or in combination, for at least the reasons provided hereinafter.

Claims 11, 12, 14 and 15 depend from Claim 1 and include all of the limitations of Claim 1. As previously set forth herein, Claim 1 recites one or more limitations that are not taught or suggested by *Elnozahy* and *Mortensen*. For example, the Claim 1 limitations “an application program executing on a server device processing a request from a client process executing on a client device and generating an item in response thereto that is to be sent to the client process” and “intercepting the item generated by the application program prior to arrival of the item at the client process” are not taught or suggested by *Elnozahy* and *Mortensen*. It is also respectfully submitted that these limitations are not taught or suggested by *Burgess* and it is understood that *Burgess* was relied upon in the Office Action for the limitations of Claims 11, 12, 14 and 15 and not for these limitations. It is therefore respectfully submitted that Claims 11, 12, 14 and 15 are not taught or suggested by *Elnozahy*, *Mortensen* or *Burgess*, considered alone or in combination, and that Claims 11, 12, 14 and 15 are therefore patentable over *Elnozahy*, *Mortensen* and *Burgess*. Claims 52, 53, 55 and 56 recite limitations similar to Claims 11, 12, 14 and 15, except in the context of computer-readable media. It is therefore respectfully submitted that Claims 52, 53, 55 and 56 are patentable over *Elnozahy*, *Mortensen* and *Burgess* for at least the reasons set forth herein with respect to Claim 11, 12, 14 and 15.

Claim 83 recites limitations that, as described herein with respect to Claim 1, are not taught or suggested by *Elnozahy*, *Mortensen* or *Burgess*. For example, the Claim 83 limitations “the application program processing a request from a client process and generating an item in response thereto that is to be sent to the client process” and “intercepting the item produced by the application program prior to arrival of the item at the client process” are not taught or suggested by *Elnozahy*, *Mortensen* or *Burgess*. Claim 85 recites limitations similar to Claim 83, except in the context of a computer-readable medium. It is therefore respectfully submitted that

Claims 83 and 85 are patentable over *Elnozahy*, *Mortensen* and *Burgess* for at least the reasons set forth herein with respect to Claim 1.

REJECTION OF CLAIMS 18, 19, 23, 28, 59, 60, 64 AND 69 UNDER 35 U.S.C. § 103(a)

Claims 18, 19, 23, 28, 59, 60, 64 and 69 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Elnozahy* in view of *Mortensen* and further in view of *Guthrie*, U.S. Patent No. 6,266,681. It is respectfully submitted that Claims 18, 19, 23, 28, 59, 60, 64 and 69 are patentable over *Elnozahy*, *Mortensen* and *Guthrie*, considered alone or in combination, for at least the reasons provided hereinafter.

Claims 18, 19, 23 and 28 depend from Claim 1 and include all of the limitations of Claim 1. As previously described herein, Claim 1 recites one or more limitations that are not taught or suggested by *Elnozahy* or *Mortensen*. For example, the Claim 1 limitations “an application program executing on a server device processing a request from a client process executing on a client device and generating an item in response thereto that is to be sent to the client process” and “intercepting the item generated by the application program prior to arrival of the item at the client process” are not taught or suggested by *Elnozahy* and *Mortensen*. It is also respectfully submitted that these limitations are not taught or suggested by *Guthrie* and it is understood that *Guthrie* was relied upon in the Office Action for teaching the limitations of Claims 11, 12, 14 and 15 and not for these limitations. It is therefore respectfully submitted that Claims 18, 19, 23 and 28 are patentable over *Elnozahy*, *Mortensen* and *Guthrie*. Claims 59, 60, 64 and 69 recite limitations similar to Claims 18, 19, 23 and 28, except in the context of computer-readable media. It is therefore respectfully submitted that Claims 59, 60, 64 and 69 are patentable over *Elnozahy*, *Mortensen* and *Guthrie* for at least the reasons set forth herein with respect to Claims 18, 19, 23 and 28.

CONCLUSION

It is respectfully submitted that all of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested. If there are any additional charges, please charge them to Deposit Account No. 50-1302.

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that such contact would be helpful in furthering the prosecution of this application.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP



Edward A. Becker

Reg. No. 37,777

Date: December 1, 2006

2055 Gateway Place, Suite 550
San Jose, CA 95110
Telephone: (408) 414-1204
Facsimile: (408) 414-1076

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450

on December 1, 2006 by _____



Susan Jensen

Susan Jensen